

SECTION 319 GRANT ELIGIBILITY ISSUES

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STATUTORY OVERVIEW

- CWA Section 319 requires states to prepare assessment reports and management programs. It also includes a grant program to assist in implementing the approved management program.
- CWA Section 518 says that Tribes may be treated in the same manner as a state for purposes of Section 319 if they meet certain conditions.

GRANT ELIGIBILITY

- THEREFORE, to be eligible for a Section 319(h) grant, a Tribe will need ALL of the following:
 1. Approved Assessment Report (Section 319 (a))
 2. Approved Management Program (Section 319(b)); AND
 3. Approved application for “treatment in the same manner as a state.” (Section 518 and 40 CFR 35.633).

TAS APPLICATION

- Federal Recognition (e.g. Federal Register Notice).
- Governing body carrying out substantial governmental duties and powers. This could include:
 - Description of form of tribal government.
 - Description of governmental functions currently performed.
 - Source of governmental authority, such as tribal constitution, by-laws etc.
- Function to be exercised by Tribe pertain to the management and protection of water resources” held by the Tribe or “otherwise within the borders of an Indian reservation.” (See slide 5)
- The Tribe is reasonably expected to be capable of carrying out the program. (See slide 6)

Pertaining to Water Resources

- Must show that activities pertain to waters “otherwise within the borders of an Indian reservation.”
- Describe Reservation and Reservation waters.
- Provide Maps.
- “Reservation” includes all land within the exterior boundaries. In addition, trust land not within traditional exterior boundaries would be considered a de facto “reservation. Therefore, Tribes which do not have a reservation with established boundaries can seek TAS for trust lands.

CAPABILITY

- Description of previous management experience;
- Description of existing environmental programs being carried out;
- Description of the organization which will be carrying out the program;
- Description of technical and administrative capabilities of staff which will carry out program.

MANAGEMENT PROGRAM ISSUES

- Tribe must have authority to carry out the activities proposed in the management plan. Section 319 is not a “delegation” of authority. A Tribe must have sufficient authority to implement each element of the management program.
- Management program must include a certification from the tribal attorney that the Tribe has adequate authority to implement the management program.

MANAGEMENT PLAN ISSUES Public Involvement/Public Comment

- Management Program is submitted to EPA “after notice and opportunity for public comment.” Section 319(b)(1). The Tribe’s submittal should demonstrate compliance with this requirement and also include a response to comments.
- EPA looks to 40 CFR Part 25 to determine compliance with this requirements.

REQUIREMENTS OF PART 25

40 CFR 25.4(c) requires:

1. 30 day notice (with opportunity to comment) prior to taking action.
2. Tribes should develop and maintain a list of persons and organizations (tribal and non-tribal) which have or may have interest in activities. 40 CFR 25.4(b)(5).
3. Notice must be given to interested and affected parties, including appropriate portions of the list mentioned above.
4. 40 CFR 25.4(c) describes content of notice: timetable, issues under consideration, tentative determination, applicable laws, the location where relevant documents may be reviewed, contact information and "other appropriate information."
5. There is no requirement for a hearing or meeting, but that can be done at Tribe's discretion. (See special requirements at 40 CFR 25.5 and 6)

EPA REVIEW

- The Regional team (Water Division, ORC and Indian Environmental Office) will review submittals.
- The Regional Administrator is the final decision-maker. Our goal is that the recommendation for the TAS application, the assessment report and the management program are presented to the RA as a single package.
- The funding cycle generally requires that the eligibility determination be made by the 2nd Friday in October to be considered for funding.

QUESTIONS?

- The Office of Regional Counsel would be happy to discuss any of these issues.
Please call:
- Rodger Field at (312) 353-8243 or
- Barbara Wester at (312) 353-8514